

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

7-11-95
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Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

SEP 19 1995

Employer Identification Number: [REDACTED]

Key District: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were originally incorporated under the law of [REDACTED] on [REDACTED]. You state that you were incorporated with essentially no operating funds, and that your first undertaking has been to gather enough funds to sustain your operational (i.e., programming expenses). You have done this by asking for private donations where appropriate, generally from family and friends.

The members of your Board of Directors are:

President & Director [REDACTED], M.S. (bio-chemistry), D.D., ordained minister; twenty years experience in residential counseling, meditation seminar/workshop leadership, foundation administration and soundtrack/video production; skilled in computer communication networking with many contacts nationally and internationally; member of two high IQ societies and listed in Who's Who Worldwide for [REDACTED]. She will devote full time to the affairs of the Foundation.

Vice President & Director [REDACTED] B.S. (biology), field ecologist for [REDACTED] on assignment in the [REDACTED]; two years experience in secondary school education, Warrant Officer in U.S. Army (honorable discharge), three years experience in work associated with National Biological Survey. He will devote 2% of his time to Foundation affairs.

Secretary/Treasurer & Director [REDACTED], Ph.D.
(geology), professor of geology, [REDACTED]
[REDACTED], extensive publication and field
work in geology in the [REDACTED]
and [REDACTED] area. He will devote 2% of his time to
Foundation affairs.

In your original application, you described your proposed activities as follows:

a. Instruction and Training

Sponsorship of workshops and seminars in health-promoting activities will be offered at minimal cost and conducted by acknowledged professionals in various techniques, including T'ai Chi, yoga, meditation and mild forms of exercise. Your President is proficient in meditation and holds a D.D. in Holistic Theology. Similar professionals will be invited to participate as teachers/leaders of workshops and seminars. These activities were to be conducted in the community around [REDACTED] and wherever an appropriate setting may be procured, such as retreat locations in various parts of the U.S.

Most of these offerings will be geared to the older segment of the population, i.e., gentle in approach and sensitive to the physical constraints and needs of such.

b. Ecological studies and land preservation

Ecological activities and land preservation fall into the category of education for the community and are under the direction of your Vice-President who holds a B.S. in Biology and currently conducts field investigations in ecology for federal and university agencies.

Current approaches in this area involve the presentation of informational monographs in a variety of unusual areas of interest, such as common lizards of [REDACTED] and the Western United States, common grasses and small mammal populations, i.e., things that people see around them every day in which they may have an interest.

You plan to procure small land preserves in the [REDACTED] [REDACTED] area which especially demonstrate populations of indigenous and sensitive wildlife and plant life, setting these aside as preservation plots open to study and research.

c. Animal protection, study and research

Animal protection, other than what is obtained with land preservation, will be basically philanthropic with some funds being donated to local shelters and humane societies. These activities are under the direction of your Secretary/Treasurer who holds a Ph.D. in geology; as a trained research scientist, he will also be responsible for the direction of your study and research interests and provide expertise for land evaluation, seminars and training in the field of geology. These activities, while not bound by any constraints to the local area, will most probably occur within the State of [REDACTED] and, in the case of animal protection, involve the local humane societies

In response to a request for additional information to clarify your activities, you responded, in a letter dated [REDACTED] [REDACTED] that pursuant to a meeting of the Board of Directors on [REDACTED], you revamped your proposed approach to emphasize the following:

A. The construction and implementation of what is termed a World-Wide Web Home Page. You state that the exponentially-increasing use of the Internet, a globally-linked network of personal and corporate computers, will allow members of the public to access [your Home Page] without charge and in a readily usable form.

B. To do this, you have been a member of the locally-based Internet server since [REDACTED], and the funds to maintain this membership have been written into your budgets for [REDACTED] and [REDACTED].

C. Your President will be in charge of the creation, operation and maintenance of this means of public/private support and dissemination of information.

D. There are no requirements that a person or organization must meet in order to participate in or receive benefit from this facility.

E. There are no fees or other charges associated with this activity.

F. Another advantage of this approach is that your Home Page is accessible 100% of the time, that is, 24 hours a day, for anyone who chooses to do so.

G. The percentage of funds devoted to this activity is █%; the remainder of the income (█%) is set aside as savings/investment.

The following is a discussion of the material which will be available on your Home Page (You state that this listing can be easily updated and expanded):

1. Daily contemplation/meditation/prayer guide;
2. Daily astronomical guide to planetary movements and other events of astronomical interest;
3. Weekly reports on findings of interest in biology and medicine;
4. Weekly reports on findings of interest in geology;
5. Weekly calendar of events and meetings for the local community;
6. Listing of conferences of interest;
7. Regularly scheduled IRC (internet relay chat), a Foundation hosted support group for people to share individual experiences; the topic of these discussions will vary from week to week and will be posted on your Home Page. The President will serve as the online host for these events which are much like a conference call and occur in real time.
8. Series of tutorials in biology and geology which can be accessed as text-based files to be downloaded to home or corporate computers or read as is.

[REDACTED]

You state that all these offerings will be available free of charge to the general public. No instructors/speakers or conventionally(sic)-published materials will be required. The time of activities such as IRC's that occur in real time can be posted without charge to Internet lists where there is interest.

In addition to your Internet activities, you have indicated that you will sell tapes, books and other materials. Soundtracks and videos, where available, will be sold for cost plus [REDACTED] (These materials are normally not expensive although the initial mastering and duplication of tapes can be.) You state that you would like to recover your costs and provide the Foundation with a modest profit from these endeavors.

Section 501(c)(3) of the Code provides for the exemption of educational organizations.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(3) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to the instruction of the public on subjects useful to the individual and beneficial to the community. An example of an educational organization described in the regulations is one whose activities include public discussions, forums, lectures, panels and other similar programs. Such programs may be on radio or television.

Rev. Rul. 66-220, 1966-2 C.B. 209, held that a nonprofit corporation organized and operated exclusively for educational purposes to operate a noncommercial educational broadcasting station presenting educational, cultural and public interest programs is exempt from Federal income tax under section 501(c)(3) of the Code.

Rev. Rul. 67-342, 1967-2 C.B. 187, held that a nonprofit organization which produces educational films concerning a particular subject and which disseminates its educational material to the public by means of commercial television may

qualify for exemption under section 501(c)(3) of the Code where the films are presented in a noncommercial manner.

Rev. Rul. 73-439, 1973-2 C.B. 176, provides that An organization that selects its membership from the junior class of a college primarily on the basis of compatibility without regard to scholarship, and that holds closed meetings at which personally oriented speeches and discussions are carried on by the speaker-members, is not operated for exclusively educational purposes and does not qualify for exemption under section 501(c)(3) of the Code; Rev. Rul. 64-117 superseded.

Rev. Rul. 74-614, 1974-2 C.B. 164, provides that an otherwise exempt organization of exempt colleges and universities that devises, operates, and provides the organizational structure for a regional network of member owned or leased computers to collect and disseminate scientific and educational information to exempt members' faculties and students is operated exclusively for charitable purposes and exempt under section 501(c)(3) of the Code.

Rev. Rul. 76-4, 1976-1 C.B. 145, held that a no profit organization that produces and distributes free (or at small cost-defraying fees) educational, cultural, and public interest programs for public viewing via public-educational channels of commercial cable television companies is operated exclusively for educational purposes and is exempt from Federal income tax under section 501(c)(3) of the Code, and that any private benefit to the commercial cable television companies is outweighed by the direct benefit to the general public.

Rev. Rul. 76-443, 1976-2 C.B. 149, provides that a nonprofit organization that makes facilities and equipment available to the general public for the production of noncommercial educational or cultural television programs for communication to the public via public and educational channels of a commercial cable television company qualifies for exemption under section 501(c)(3) of the Code.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau V. United States, 326 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'g. 39 T.C. 93 (1962), Cert. denied, 376 U.S. 569

(1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

The revenue rulings cited above, clearly indicate that an organization may achieve its charitable, educational or religious purposes through the production of certain types of entertainment programs, so long as the programs are presented in a noncommercial manner.

You have stated that your services are provided via the Internet. The Internet is not a single responsible organization, but is instead a worldwide network of computer networks whose various users both commercial and noncommercial, contribute and share information, provide bulletin boards, and conduct interactive discussion groups on an unlimited number of subjects. The Internet appears to be a logical extension of the organization described in Rev. Rul. 74-614, supra, which was held to be exempt, except that the Internet has gone far beyond the scope of "exclusively educational" within the meaning of that ruling.

The internet may be likened to a worldwide community center and library with unlimited educational and recreational resources available to the general public. Establishing your homepage on the Internet is similar to lending a book or books (containing your selected subject matter) to a library. The contents of your homepage are read, reviewed, discussed and criticized by other members (much like those who check out and read library books) and, at your discretion, remains on the Internet for others to access. Such activity is not described in section 501(c)(3).

Your homepage is your method of interacting with others on the Internet, but unlike the donor of books to the library, who usually must surrender dominion and control of the donated books, your homepage remains under your personal control in that you can leave it on the Internet, change it, alter or revise it, or you may choose to remove it altogether. Because you did not surrender dominion and control over your homepage, even if the Internet were an organization described in section 501(c)(3), you cannot be said to have made a contribution which evidences a charitable intent.

The establishing of your Homepage on the Internet may also be likened to loaning a painting or other work of art to a museum. While the work may become part of an exhibit that is

classified as educational within the meaning of section 501(c)(3) of the Code, it does not thereby create in the donor a basis for qualification as an exempt organization.

You can be distinguished from the organization discussed in Rev. Rul. 66-220, supra., who operated the broadcasting station. You do not operate the medium (the Internet) used for the dissemination of information whose content and method of presentation may or may not be exclusively educational in nature. Instead you are one of many users and contributors to the Network.

You can also be distinguished from the organizations discussed in Rev. Ruls. 67-342, and 76-4, supra., who produced educational and public interest programs and disseminated them to the general public. You will conduct discussions on the Internet, (a vast medium used for both commercial and noncommercial purposes) on various topics of personal interest to your founders.

Like the organization in Rev. Rul. 73-439, supra., you have no objective standards as to who will benefit from participate in your activities. Indeed, it is impossible to determine because of the very nature of the Internet and its public access and the constant promotion of the Internet as a place to make business and personal contacts and fraternize with other users. The personally oriented speeches, discussion groups, and any other materials that you may put there relating to your various academic areas of specialty and the other subject matter are all designed to stimulate fellowship and fraternity among Internet users. Because of the unlimited nature and variety of information and services available on the Internet, we believe that your activities on the Internet are far more recreational and fraternal than educational. Therefore, like the organization in the ruling, you are not operated exclusively for educational purposes.

Your contribution to the network (your homepage) is not an activity described in section 501(c)(3) of the Code; nor is it a contribution to an organization or charitable class exempt under section 501(c)(3). You are conducting a public activity for the benefit of private parties who are not members of a charitable class. Therefore, the creation and maintenance of your homepage on the Internet is not an activity for which exemption under section 501(c)(3) can be recognized.

In addition, you have not established that your proposed sales of soundtracks and videos is an exempt activity or that it is related to any exempt activity.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Even if you were found to be exempt, you would be classified as a non-operating private foundation because you did not meet the income, nor any supplemental tests of section 4942(j)(3)(A) as modified by section 53.4942(b)(1) of the Foundation and Similar Excise Tax Regulations.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

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[Redacted]

Date 11-3-95

Signature [Redacted]

11/3/95

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: [Redacted]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[Redacted]

[Redacted]
Chief, Exempt Organizations
Technical Branch 3

cc: DD, Atlanta
Attn: EO Group

cc: [Redacted]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[Redacted]	[Redacted]	[Redacted]				
Surname	[Redacted]	[Redacted]	[Redacted]				
Date	8-21-95	9/18/95					